

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Alfredo Gonzalez	Team: Squad #3	CCRB Case #: 201600648	<input checked="" type="checkbox"/> Force	<input type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Monday, 01/25/2016 2:45 AM	Location of Incident: 38-26 21st Street	Precinct: 114	18 Mo. SOL 7/25/2017	EO SOL 7/25/2017	
Date/Time CV Reported Tue, 01/26/2016 3:33 PM	CV Reported At: CCRB	How CV Reported: Phone	Date/Time Received at CCRB Tue, 01/26/2016 3:33 PM		

Complainant/Victim	Type	Home Address

Witness(es)	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. POF Rosemary Stevens	07815	944268	114 PCT
2. POM Mikael Djam	19212	952692	114 PCT

Officer(s)	Allegation	Investigator Recommendation
A.POF Rosemary Stevens	Force: Police Officer Rosemary Stevens pointed her gun at § 87(2)(b)	
B.POF Rosemary Stevens	Force: Police Officer Rosemary Stevens pointed her gun at § 87(2)(b)	
C.POF Rosemary Stevens	Abuse: Police Officer Rosemary Stevens frisked § 87(2)(b)	
D.POM Mikael Djam	Abuse: Police Officer Mikael Djam frisked § 87(2)(b)	
§ 87(4-b), § 87(2)(g)		

Case Summary

§ 87(2)(b) and § 87(2)(b) filed this complaint via telephone on January 26, 2016.

On January 25, 2016, at approximately 2:45 a.m., § 87(2)(b) and § 87(2)(b) went to the Queensboro Car Wash to withdraw some cash from the ATM inside with an EBT card. The card became stuck in the machine, so an employee, § 87(2)(b) called 911 for assistance. § 87(2)(b) and § 87(2)(b) waited outside for the officers. Eventually, PO Rosemary Stevens and PO Mikael Djam of the 114th Precinct arrived to the location in an RMP. Immediately upon arrival, PO Stevens exited the vehicle and pointed her gun at § 87(2)(b) and § 87(2)(b) (**Allegations A and B**). Afterward, PO Stevens and PO Djam approached § 87(2)(b) and § 87(2)(b) and frisked them (**Allegations C and D**). PO Stevens then entered the car wash and spoke with the 911 caller, who confirmed that § 87(2)(b)'s EBT card was stuck inside the ATM. There were no summonses issued or arrests made as a result of this incident.

The CCRB retrieved surveillance video from the car wash that captured the incident (see Snag Video below).



201600648_20160422_1052_DM.mp4

Mediation, Civil and Criminal Histories

- This case was suitable for mediation; however, § 87(2)(b) and § 87(2)(b) were uncooperative.
- A Notice of Claim inquiry was submitted on April 21, 2016, and the results will be added to the case file upon its receipt.
- [§ 87(2)(b)] [§§ 86(1)(3)&(4)] [§ 87(2)(c)]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

Civilian and Officer CCRB Histories

- This is § 87(2)(b)'s and § 87(2)(b)'s first CCRB complaint (Board Review 03, 04).
- PO Stevens has been a member of the NYPD for eight years. This is her first CCRB complaint.
- PO Djam has been a member of the NYPD for three years. This is his first CCRB complaint.

Potential Issues

- § 87(2)(b) and § 87(2)(b) did not provide a verified statement to the CCRB and were deemed uncooperative after exhaustive contact attempts.
- Field work was conducted at the car wash to obtain statements from witnesses; however, there were no employees, save for § 87(2)(b) who recalled witnessing the incident. § 87(2)(b) was asked to sign a verification form, but he refused to do so.
- § 87(2)(g)
[REDACTED]
[REDACTED]

Findings and Recommendations

Allegations Not Pleaded

Abuse of Authority: § 87(2)(g) the officers were called to the location by § 87(2)(b) in agreement with § 87(2)(b) and § 87(2)(b) who waited for them outside the car wash in the belief that the officers were responding to assist them with their stuck EBT card.

Allegation A – Force: Police Officer Rosemary Stevens pointed her gun at § 87(2)(b)

Allegation B – Force: Police Officer Rosemary Stevens pointed her gun at § 87(2)(b)

It is undisputed that PO Stevens pointed her gun at § 87(2)(b) and § 87(2)(b) and § 87(2)(b) did not provide a verified statement; however, during § 87(2)(b)'s intake phone call, he stated that he was at the Queensboro Car Wash and used an EBT card to retrieve some cash from an ATM. The card became stuck, so the store manager called 911 so that they could assist § 87(2)(b) § 87(2)(b) and § 87(2)(b) were waiting outside the car wash when PO Stevens and PO Djam arrived. Immediately after exiting the vehicle, PO Stevens pointed her gun at § 87(2)(b) and § 87(2)(b) and commanded them to put their hands up, to which they complied (Board Review 05).

§ 87(2)(b) provided a phone statement to the CCRB on March 23, 2016, wherein he stated that he was working inside the car wash at the register when he observed a white male and a black male tampering with the ATM. The males informed § 87(2)(b) that their card was stuck inside; however, § 87(2)(b) believed that the card might have been stolen, so he called 911. § 87(2)(b) conveyed the above-mentioned information to the dispatcher. § 87(2)(b) only described the two suspects as a white male and a black male, and he did not make any mention of them having any tools. § 87(2)(b) did not observe any suspicious bulges on the two males, and he also informed them afterward that he had called 911, which the two males thought was “ok” and would be “better.” The officers arrived quickly after he had placed the call. § 87(2)(b) was inside the car wash when the officers arrived and observed them through the window. He did not observe any officer point his or her gun at the two individuals (Board Review 06).

§ 87(2)(b)'s 911 recording demonstrated that he did convey some concern that the ATM was being broken into and that the card might be stolen; however, he also mentioned that the alleged suspects mentioned that their card was stuck. § 87(2)(b) made no mention of a weapon or tools being involved (Board Review 10). The radio communication between the dispatcher and the officers demonstrated that the dispatcher only informed the officers that there was a larceny in progress and that “one male white” and “one male black” were attempting to break into an ATM (Board Review 11).

PO Stevens testified that on the date of the incident, she and PO Djam received a radio run in regards to a 32 (grand larceny) at a car wash located at 38-26 21st Street in Queens, in which one white male and one black male were attempting to break into an ATM. The radio run did not provide any additional information in regards to the suspects' physical description. Upon arrival, PO Stevens observed a black male and a white male – § 87(2)(b) and § 87(2)(b) – in front of the location. PO Stevens and PO Djam drove onto the car wash's property and stopped approximately five feet away from § 87(2)(b) and § 87(2)(b) PO Stevens observed that

both males had their hands in their pants' front pockets. PO Stevens stated that the area was dark because it was nighttime, but there was some light emanating from the car wash. PO Stevens and PO Djam exited the RMP immediately and PO Stevens pointed her gun at § 87(2)(b) and § 87(2)(b) and then commanded them to remove their hands from their pockets, to which they complied. PO Stevens then re-holstered her gun. When asked why she pointed her gun at them, PO Stevens stated that she feared for her safety because the call was for a violent crime, because they fit the description and were in front of the location, and because they had their hands in their pockets. PO Stevens did not observe any bulges on either § 87(2)(b) or § 87(2)(b) that were indicative of a weapon. When asked what specifically makes grand larceny a violent crime, PO Stevens stated that because it is a felony and part of the "seven major crimes." When pressed for additional details, PO Stevens indicated that these types of crimes can sometimes involve weapons, and she does not know beforehand who is carrying a weapon and who is not, so she had to make sure they did not have anything that could hurt her. When asked whether the area is known for any particular crimes, PO Stevens stated that it is a high crime area, especially in regards to robberies, burglaries, and break-ins into vehicles. When asked if she had ever responded to calls regarding suspects breaking into an ATM, PO Stevens stated that she recently responded to one, but the suspects had left by the time she arrived (Board Review 07).

PO Djam corroborated that they received a call in regards to two males, one white and one black breaking into an ATM, which PO Djam referred to as a "serious crime." Upon arrival, PO Djam's attention was focused on § 87(2)(b) who was in front of him, so he could not see clearly what PO Stevens was doing at the time. PO Djam did not see whether PO Stevens pointed her gun at anyone; however, he became aware that she had drawn her gun when she re-holstered it. PO Djam expressed that he was concerned that the two individuals would attempt to run, so he quickly exited the RMP and grabbed the white male. When asked if the two individuals displayed any actions indicating that they would flee, PO Djam stated that the fact that they were exiting the location, combined with the nature of the crime, made him believe that it was possible that they would attempt to flee. PO Djam added that the two individuals seemed to be walking towards the sidewalk and away from the car wash then they arrived. PO Djam also explained that the car wash is located in a high crime area and that there are issues related to shootings and violent crime. PO Djam could not recall where § 87(2)(b)'s hands were placed as he arrived to the car wash (Board Review 08).

The handwritten Stop, Question, and Frisk reports, completed by PO Stevens, noted that § 87(2)(b) and § 87(2)(b) were observed taking "actions indicative of a violent crime" (grand larceny) and that force – in the form of pointing her gun – was used against them in "defense of self" (Board Review 09).

Surveillance video from the car wash shows § 87(2)(b) and § 87(2)(b) waiting outside. When PO Stevens and PO Djam arrive, they drive onto the car wash's property and stop approximately five feet away from § 87(2)(b) and § 87(2)(b). The video demonstrates that § 87(2)(b) and § 87(2)(b) do have their hands in their pockets, but they make no movements indicative of fleeing, they are standing relatively still, and they are facing the officers. Immediately after arriving, PO Stevens exits the vehicle and points her gun at § 87(2)(b) and § 87(2)(b) after which, they immediately put their hands up (see SNAG video above).

A person is guilty of grand larceny in the third degree when he or she steals property and: when the value of the property exceeds three thousand dollars, or, the property is an automated teller machine or the contents of an automated teller machine. Grand larceny is a class D felony (New York Penal Law § 155.35) (Board Review 12). Grand larceny is not among the list of

violent felonies enumerated in New York Penal Law § 70.02 (Board Review 15). An officer can draw his firearm when he has a reasonable fear for his or another's personal safety. While the standard is ultimately an objective one, due reference should be given to the judgment of the officer at the time and scene of the incident. PD v. Gliner, OATH Index No. 955/00 (200) (Board Review 13).

§ 87(2)(g)

Allegation C – Abuse of Authority: Police Officer Rosemary Stevens frisked § 87(2)(b)

Allegation D – Abuse of Authority: Police Officer Mikael Djam frisked § 87(2)(b)

It is also undisputed that PO Stevens frisked § 87(2)(b) and that PO Djam frisked § 87(2)(b).

During his intake phone call, § 87(2)(b) stated that both officers approached him and § 87(2)(b) and patted them down immediately after PO Stevens had pointed her gun at them. Afterward, the officers requested their identification and § 87(2)(b) and § 87(2)(b) explained to them that his EBT card was stuck in the ATM. After their identification was returned, § 87(2)(b) and § 87(2)(b) departed (Board Review 05).

§ 87(2)(b) stated that he never exited the car wash after placing the 911 call, but he was able to observe that officers patted down § 87(2)(b)'s and § 87(2)(b)'s pockets to make sure they were not carrying any tools. § 87(2)(b) emphasized that he never made any mention of tools during his 911 call (Board Review 06).

As mentioned above, the dispatcher only relayed that there was a grand larceny in progress in which one white male and one black male were trying to break into an ATM. The dispatcher did not mention that the suspects had any weapons or tools (Board Review).

After pointing her gun at § 87(2)(b) and § 87(2)(b) PO Stevens stated that she approached § 87(2)(b) while PO Djam approached § 87(2)(b) after which, they were placed in handcuffs. Immediately after, both individuals were frisked. PO Stevens frisked § 87(2)(b)'s pants pockets, both front and back, and around his waistband. PO Stevens did not find anything. After speaking to § 87(2)(b) § 87(2)(b) and § 87(2)(b) were released from the handcuffs and the officers explained why they were stopped. PO Stevens stated that § 87(2)(b) and § 87(2)(b) seemed “a little upset,” but they were compliant throughout their interaction. As

stated above, PO Stevens did not observe any bulges on either § 87(2)(b) or § 87(2)(b) that would indicate that they had a weapon on their person (Board Review 07).

PO Djam could not recall the specific command he issued to § 87(2)(b) but believed he “probably” commanded him to not move and to allow him to see his hands. PO Djam could not recall where § 87(2)(b)'s hands were placed upon arriving to the car wash and immediately before he was commanded to stop. PO Djam could not specifically remember if he saw any bulges on his person, but stated that he was wearing layers because it was cold that night. PO Djam did not observe any specific bulges on the § 87(2)(b)'s person that were indicative of a weapon. PO Djam frisked § 87(2)(b) around his waist, his pants' legs, and around his jacket and sweatshirt. No weapons were found. § 87(2)(b) did not provide any resistance when he was frisked and was generally compliant. When asked if it was general procedure to frisk individuals when responding to calls regarding a suspect breaking into an ATM, PO Djam answered affirmatively, and stated that it was done to ensure the safety of both the officers and the suspects. When asked why he believed grand larceny to be a serious crime, PO Djam stated that it was considered a felony and that people that break into ATMs usually have tools – which can include knives and screwdrivers. PO Djam has responded to previous ATM break-ins, but the suspects were gone by the time he arrived (Board Review 08).

In her Stop, Question, and Frisk reports, PO Stevens listed “actions indicative of engaging in a violent crime” and “violent crime suspected” as the reasons why § 87(2)(b) and § 87(2)(b) were frisked (Board Review 09).

The surveillance video shows that § 87(2)(b) and § 87(2)(b) removed their hands from their pockets and raised them above their heads immediately after the officers exited the RMP. The video also shows that § 87(2)(b) and § 87(2)(b) were frisked by PO Stevens and PO Djam respectively, approximately ten seconds after the officers exited their vehicles, and they were compliant with the officers from the onset of their interaction (see Snag Video above).

A person is guilty of grand larceny in the third degree when he or she steals property and: when the value of the property exceeds three thousand dollars, or, the property is an automated teller machine or the contents of an automated teller machine. Grand larceny is a class D felony (New York Penal Law §155.35) (Board Review 12), but it is not included in the list of violent felonies found in New York Penal Law § 70.02 (Board Review 15). In order to perform a frisk, an officer must have reasonable suspicion that the person is armed and dangerous. Arizona v. Johnson, 555 U.S. 323 (2009) (Board Review 14).

§ 87(2)(g)

§ 87(2)(g)

§ 87(4-b), § 87(2)(g)